

## **REMARKS/ARGUMENTS**

The Office Action mailed on June 3, 2010 has been carefully considered. Accordingly, the changes presented herewith, taken with the following remarks, are believed sufficient to place the present application in condition for allowance. Reconsideration is respectfully requested.

### **Status of the Claims**

Claims 49-51, 53-56, and 58-70 are currently pending in the instant application.

Claims 49-51, 53-56 and 58-70 stand rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-22 of U.S. Patent No. 6,719,949. The Applicants respectfully ask that this rejection be held in abeyance in the present application until a determination of allowable subject matter has been made.

Claims 49-51, 53-56 and 58-70 stand rejected under 35 U.S.C. 1 03(a) as being unpatentable over USPN 5,455,008 ("Earley"). Applicants traverse the rejection for following reasons.

### **Claims 49-51, 53-56 and 58-70 Are Patentable Over Earley.**

Claim 49 is directed to system for manipulating and thermal cycling a sample well tray comprising, in pertinent part, only one sample block for receiving the sample well tray. By contrast, Earley discloses a system that must operate without intervention after an initial setup and have several heat blocks sculpted to fit microtiter plates. Earley, column 5, lines 48-53. Thus, Earley actually teaches away from the recitation of claim 49 of only one sample block.

The current Office Action asserts that Earley employs multiple heating blocks 14 in order to process large amounts of samples but states that each heating block performs the sample heating step as the next. The Office Action further assert that it would, therefore, have been obvious to one having an ordinary skill in the art at the time of the invention to modify Earley to reduce the number of heater blocks to one in order to process one microtiter plate at a time. Applicants respectfully disagree with these assertions.

First, as cited above, Earley specifically discloses a system that has several heat blocks, and that the system preferably has six or more heat blocks. Earley, column 5, lines 52-53. Furthermore, Earley indicate that the system must, inter alia, include several heat blocks. Earley, column 5, lines 48, 52-53.

Second, Applicants traverse the apparent assertion in the current Office Action that Earley employs multiple heating blocks 14 in order to process large amounts of samples. Applicants find no such disclose by Earley and request the Office point out where Earley discloses that multiple heating blocks 14 is used in order to process large amounts of samples.

Third, in contrast to the assertion in the current Office Action that Earley employs multiple heating blocks 14 in order to process large amounts of samples, Earley rather discloses that multiple heaters are used at different steps in a process of DNA sequencing. Earley, column 12, line 63 to column 13, line 42. For example, in column 12, Earley discloses:

*"...The lid of the microtiter plate is replaced and the microtiter plate is then placed on one of the active heating blocks 14 to begin the five minute label and extension step while being heated to 65° C. After five minutes the lid of the microtiter plate is removed to an adjacent heating block*

*14.... After five minutes, the lid is removed to an adjacent heating block and portions of the STOP buffer are then aspirated from column no. 6 into each of columns nos. 2-5 to stop the reactions. After the addition of the STOP buffer to the termination reactions, the lid is replaced and the microtiter plate is moved to an adjacent heating block that is at room temperature while the reactions in the other microtiter plate in the pair is completed...." (Emphasis Added) Earley, column 12, lines 10-31.*

Thus, Earley discloses a system and process that utilize several heating blocks, each heating block being used at a different step in the process.

The current Office Action asserts that the heating blocks 14 of Earley are equivalent to the only one sample block of claim 49. However, contrary to assertions made in the current Office Action, Applicants have shown that Earley clearly discloses a system that requires several heating blocks 14. Accordingly, Applicants request that the rejection of claim 49 be withdrawn.

Claim 61 is directed to system for manipulating and thermal cycling a sample well tray comprising, in pertinent part, a thermal cycling device consisting of only one sample block for receiving the sample well tray. By contrast, as discussed above in relation to claim 49, Earley discloses a system that must operate without intervention after an initial setup and have several heat blocks sculpted to fit microtiter plates. Earley, column 5, lines 48-53. Thus, Earley actually teaches away from the recitation of claim 61 of thermal cycling device consisting of only one sample block.

The current Office Action asserts that Earley employs multiple heating blocks 14 in order to process large amounts of samples but states that each heating block performs the sample heating step as the next. The Office Action further assert that it would, therefore, have been obvious to one having an ordinary skill in the art at the time of the invention to modify Earley to reduce the number of heater blocks to one in order to process one microtiter plate at a time. Applicants have already shown above that such assertions are without merit. Accordingly, contrary to assertions made in the current Office Action, Applicants have shown that Earley clearly discloses a system that requires several heating blocks 14 and, therefore, does not consist of only one sample block. For at least these reasons, Applicants request that the rejection of claim 61 be withdrawn.

In view of the above, Applicants respectfully request withdrawal of the rejection claims 49-51, 53-56 and 58-70 over Earley.

Appl. No. 10/785,082

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***CONCLUSION***

For the foregoing reasons, Applicants respectfully assert that the claims now pending are allowable over the cited documents. Therefore, Applicants earnestly seek a notice of allowance and prompt issuance of this application.

The Commissioner is hereby authorized to charge payment of any fees associated with this communication, including any extension fees, to Deposit Account No. 503994.

Respectfully submitted,  
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